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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

29 Cung Le, Nathan Quarry, Jon Fitch, Brandon
30 Vera, Luis Javier Vazquez, and Kyle
31 Kingsbury on behalf of themselves and all
32 others similarly situated,

33 Plaintiffs,
34 v.

35 Zuffa, LLC, d/b/a Ultimate Fighting
36 Championship and UFC,

37 Defendant.

38 Case No.: 2:15-cv-01045-RFB-(PAL)

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**ZUFFA, LLC'S MOTION TO SEAL
CERTAIN MATERIALS FILED WITH
PLAINTIFFS' MOTION TO
CHALLENGE PRIVILEGE
DESIGNATION AND ZUFFA, LLC'S
OPPOSITION TO THAT MOTION**

1 Pursuant to the Stipulated Protective Order governing confidentiality of documents
 2 entered by the Court on February 10, 2016, ECF No. 217 (“Protective Order”), the parties’
 3 agreement regarding the disclosure of documents during the search term testing process, and
 4 Rules 5.2 and 26(c) of the Federal Rules of Civil Procedure, Defendant Zuffa, LLC (“Zuffa”)
 5 respectfully requests that the Court order the Clerk of the Court to file under seal portions of
 6 Plaintiffs’ Motion to Challenge Privilege Designation (ECF No. 251), Exhibits 1 and 2 of the
 7 Rayhill Declaration (ECF No. 251-2 and 251-3) and portions of Zuffa’s Opposition to Plaintiffs’
 8 Motion to Challenge Privilege Designation and accompanying Exhibits A, B, C, D, E and F. This
 9 motion is accompanied by the Declaration of John F. Cove, Jr. in Support of Zuffa, LLC’s
 10 Motion to Seal.

11 The Protective Order in this case provides for the filing of documents under seal where
 12 portions or the entirety of the document contain Confidential or Highly Confidential Information.
 13 ECF No. 217, ¶ 14.3. Both Plaintiffs’ Motion and Zuffa’s Opposition include exhibits that
 14 contain confidential information regarding the terms and language of Zuffa’s agreements,
 15 communications regarding contract negotiations, and other documents reflecting confidential
 16 business strategies and analysis. Because these materials implicate Zuffa’s confidential
 17 information, Zuffa moves to file these exhibits and the portions of the Motion and Opposition
 18 relating to these exhibits under seal.

19 Specifically, Zuffa seeks to seal the following information or exhibits:

20 **Plaintiffs’ Motion (ECF No. 251)**

21 Exhibit 1 (MMERSCH00066967) (ECF 22 251-2)	This document contains an attorney’s request for legal advice about a draft of proposed contractual language and is protected by attorney-client privilege, as well as containing Zuffa’s confidential business information.
23 Exhibit 2 (Unredacted Version of 24 Draft Joint Status Report) (ECF 251-3)	This exhibit contains a draft of the parties’ Joint Status Report that contains confidential material that this Court has already Ordered to remain under seal. ECF No. 253.
25 Portions of the Motion	Zuffa seeks to seal the portions of the Motion which contain references and citations to the abovementioned confidential material in Exhibits 1-2 as reflected in the redacted version filed with the Court.

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2 **Zuffa's Opposition**

3 Exhibit A (MMERSCH00066967)	4 This document contains an attorney's request for legal advice about a draft of proposed contractual language and is protected by attorney-client privilege, as well as containing Zuffa's confidential business information.
5 Exhibit B (ZFL-0146240)	6 This document is an executed version of Zuffa's agreement with an athlete.
7 Exhibit C (ZFL-0945636-61)	8 This document contains information regarding negotiations over contractual terms, as well as a redline version of the agreement reflecting those negotiations.
9 Exhibit D (ZFL-0827826-28)	10 This document contains communications between an athlete's representative and Zuffa describing the specific financial terms and incentives of an offer an athlete received from a competitor and a Zuffa employee's internal critique regarding that offer.
11 Exhibit E (ZFL-0945634)	12 This document contains an athlete's representative's communications with his client regarding the confidential contract negotiations he had with Zuffa including specific details of Zuffa's communications and contract terms.
13 Exhibit F (ZFL-0146593)	14 This document contains Zuffa's internal business strategy regarding public communications regarding an athlete's signing.
15 Portions of the Opposition	16 Zuffa seeks to seal the portions of the Opposition which contain references and citations to the abovementioned confidential material in Exhibits A-F and Exhibits 1-2 of the Rayhill declaration as reflected in the redacted version filed with the Court.

18 While Zuffa recognizes the importance of access to public documents, for sealing requests
 19 that do not relate to dispositive motions, the presumption of public access to court filings may be
 20 overcome by a showing of good cause under Rule 26(c). *See Pintos v. Pacific Creditors Ass'n*,
 21 605 F.3d 665, 678 (9th Cir. 2010); *Kamakana v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006).
 22 The Court has "broad latitude" under Rule 26(c) "to prevent disclosure of materials for many
 23 types of information, including, but not limited to, trade secrets or other confidential research,
 24 development, or commercial information." *Phillips v. General Motors Corp.*, 307 F.3d 1206,
 25 1211 (9th Cir. 2002) (citations omitted). In light of the public interest, Zuffa has narrowly
 26 tailored its request to seek to seal the exhibits and portions of the Motion and Opposition
 27 containing confidential information. Redacted versions of the Motion and Opposition have been
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1 filed for the public to view. Accordingly, the request to seal is narrowly tailored. A
 2 “particularized showing under the good cause standard of Rule 26(c) will suffice to warrant
 3 preserving the secrecy of sealed discovery material attached to non-dispositive motions.”
 4 *Kamakana v. City and Cnty of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (citations and
 5 internal quotation marks omitted).

6 There is good cause to seal documents containing confidential business assessments and
 7 strategy, information and communications containing financial terms, incentives and negotiations
 8 over contract terms where such information could cause competitive harm if disclosed publicly.
 9 *See Selling Source, LLC v. Red River Ventures, LLC*, No. 2:09-cv-01491-JCM-GWF, 2011 WL
 10 1630338 at *2 (D. Nev. Apt. 29, 2011) (finding good cause to seal information regarding
 11 finances, contractual agreements and information regarding particular arrangements with
 12 customers); *Aevoe Corp. v. AE Tech. Co.*, No. 2:12-cv-00053-GMN-NJK, 2013 WL 2302310, at
 13 *2 (D. Nev. May 24, 2013) (finding good cause to seal financial information and business
 14 strategies); *Rainbow Bus. Solutions v. Merch. Servs.*, 2013 U.S. Dist. LEXIS 67190, at *9 (N.D.
 15 Cal. May 10, 2013) (finding compelling reasons to seal “particular information about the party’s
 16 contractual agreements . . . the public disclosure of which would impede its ability to negotiate
 17 with business partners and to stay competitive in the marketplace”).

18 If Zuffa’s internal business strategies, its contracts, or documents reflecting its
 19 negotiations over the specific terms or incentives that it offers individual athletes are publicly
 20 disclosed, it could cause Zuffa competitive harm by giving competitors unfair insight into Zuffa’s
 21 finances, agreements, negotiation strategy and its internal business processes. Zuffa treats this
 22 information as confidential. Zuffa also believes that the third-party information contained in
 23 Exhibit D which reflects the specific terms and incentives offered to an athlete by a competing
 24 promoter is also typically kept confidential from public disclosure.

25 Zuffa respectfully requests that Exhibits 1 and 2 of the Rayhill Declaration (ECF No. 251-
 26 2 and 251-3), corresponding portions of the Motion to Challenge Privilege Designation (ECF No.
 27 251), Exhibits A, B, C, D, E and F of the Lynch Declaration, and the portions of the Opposition to

1 the Motion to Challenge Privilege Designation referencing the confidential material in these
2 Exhibits be permitted to be filed under seal.

5 Dated: May 13, 2016

BOIES, SCHILLER & FLEXNER LLP

7 By: /s/ John F. Cove, Jr.

8 John F. Cove, Jr.

9 *Attorneys for Defendant Zuffa, LLC, d/b/a*
Ultimate Fighting Championship and UFC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing **Defendant Zuffa, LLC's Motion to Seal Certain Materials Filed With Plaintiffs' Motion to Challenge Privilege Designation and Zuffa, LLC's Opposition to That Motion** was served on May 13, 2016 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Michael Kim

An employee of Boies, Schiller & Flexner, LLP